

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 59 of 1991****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.J.THAKER****Sd/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? | No |
| 5 | Whether it is to be circulated to the civil judge ? | No |
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JOHN HAMILTON CHRISTIAN....Appellant(s)

Versus

B.T. LON CRIMPERS & 11....Opponent(s)/Respondent(s)

Appearance:

MR KD PANDYA, ADVOCATE for the Appellant(s) No. 1

MR RR MARSHALL, ADVOCATE for the Opponent(s)/Respondent(s) No. 1 -
2 , 4 , 6 - 7 , 10 - 11MRS KETTY A MEHTA, ADVOCATE for the Opponent(s)/Respondent(s) No.
5 , 8 - 9

MS MONALI BHATT, APP for the Opponent(s)/Respondent(s) No. 12

CORAM: HONOURABLE MR.JUSTICE K.J.THAKER

Date : 30/01/2015

ORAL JUDGMENT

1. The appellant-original complainant has preferred this appeal under Section 378 of the Criminal Procedure Code against the judgment and order dated 15.1.1990 rendered by the learned Judicial Magistrate, First Class (Municipal), Surat, in Municipal Case No.205 of 1984.

2. The case of the prosecution is that accused No.1 is the partnership firm and accused Nos.2 to 11 are its partners. Accused are doing the business of Yarn Crimping. The accused, for the purpose of their business, purchased one crimping machine of Himson Company and installed at Village-Pandesara, Taluka Choryasi and thereby purchased the said crimping machine from outside the limits of the Surat Municipal Corporation and imported and installed it within the limits of the Surat Municipal Corporation. At the time of importing such machine, the accused had not paid any octroi and therefore, a letter was written to the accused duly signed by the Municipal Commissioner of the Corporation on 10-6-83, for furnishing information as sought for therein and another letter was sent on 8-8-83 to the accused by the Commissioner of Surat Municipal Corporation. In spite of having received those letters by the accused, they had not replied to the same nor furnished any information as sought for by the Commissioner as referred to above. It is also the case of the prosecution that the accused have not furnished true and

correct information in the requisition form as laid down under Rule 21 of the Octroi Rules, along with its appendix. It was stated in the requisition form to furnish information about importation of goods during 12-9-81 and 31-5-83, within seven days. Thus, the accused have violated Octroi Rules 13 and Standing Orders 6 and 7 and thereby have committed offence under the Octroi Rules 21, 28(1) and 28(2)(c).

2.1 It is further the case of the petitioner that according to the information received by the complainant, on or about 12-8-81, accused had imported one crimping machine from the limits of GIDC, Pandesara, Taluka-Choryasi to the limits of the Surat Municipal Corporation. The cost of the said machine was to the tune of Rs.83,54,492.32 ps. At the time of importation of the said machine, a declaration form have to be filled in, according to the Octroi Rules. However, accused had intentionally not filled in the said form and without payment of octroi, the said machine was imported within the limits of Surat Municipal Corporation and thereby by not filling up the declaration form by the accused, the accused have committed offence punishable under Rule 28(1) and 28(2) of the Octroi Rules by violating Rule 13-of Octroi Rules of Surat Municipal Corporation. It is further the case of the complainant that the accused have not made any declaration in the form as prescribed by the Standing Orders, nor they had produced an original bill and thereby, have also violated Standing Order Nos.6 and 7 and have committed an offence

punishable under Standing Order 19.

2.2 It is further the case of the petitioner that the accused had imported one crimping machine, costing Rs.8,35,4492.32 ps. within the limits of Surat Municipal Corporation, without payment of any octroi duty and, therefore, the accused are liable to pay octroi duty at 2.5% as per item No.17(1) of Appendix to Rule 4 of the said Octroi Rules. The accused are bound to pay octroi duty at 2.5% against the cost of the said machine i.e. Rs.20,887.30 ps. However, with mala fide intention and with a view to commit theft, accused had not paid duty referred to above and thereby have committed offence u/s.398 of the Bombay Provincial Municipal Corporations Act,1949. According to the said section, the appellant had prayed for imposing penalty of ten times amount of octroi duty and thus, each and every accused is liable to pay ten times amounts towards octroi by way of penalty.

2.3 It is also the case of the appellant that after filing of the aforesaid complaint in the court of the Judicial Magistrate, First Class, (Municipal), Vadodara, the learned Magistrate has been pleased to issue summons on the respondent accused and the respondents accused have also appeared in the said proceedings and all the reasons of the complaint were given to the accused under Section 207 of Criminal Procedure Code and their plea was recorded.

2.4 As the charges levelled against the accused were not admitted

by them, the said case was tried by the learned Magistrate and after recording evidence of prosecution witness and after recording the plea of the accused and after hearing the parties, the learned Magistrate, by the impugned judgment and order acquitted the accused.

2.5 Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 15.1.1990 rendered by the learned Judicial Magistrate, First Class (Municipal), Surat, in Municipal Case No.205 of 1984, the appellant has preferred the present appeal before this Court.

3. Mr.Pandya, learned advocate for the appellant submitted that Because the learned Magistrate has erred in acquitting the accused by discarding the evidence of the prosecution witnesses. He also submitted that the learned Magistrate has erred in appreciating documentary evidence on record and the prosecution has undoubtedly proved the case that the accused had intentionally not paid octroi on the machine in question. He submitted that learned Judge has not properly appreciated the provisions of the Standing Orders, Octroi Rules and the Bombay Provincial Municipal Corporations Act and Rules. He submitted that the learned magistrate has erred in holding that the prosecution has failed to prove that the accused by not furnishing true, correct and complete information in the requisition form in the enclosed appendix violated

Rule 21 of Surat Municipal Corporation Octroi Rules, and also committed offence punishable under Rule 28(2) of the Octroi Rules. He also submitted that the learned Magistrate has erred in holding that the prosecution has failed to prove that the accused, by not filling up the declaration form showing the value of the machine, have violated Rule 13 and thereby committed an offence punishable under Rule 28 (1) (2) of the Octroi Rules. He also submitted that the learned Magistrate has erred in holding that the prosecution has failed to undoubtedly prove that the accused, by violating Standing Order 6 and 7 of the Surat Municipal Corporation have committed offence punishable under Standing Order 19.

4. Mr.Pandya further submitted that the learned Magistrate ought to have appreciated oral evidence of Gunvantrai Shankarlal Dave at exh.71, Ramchandra Namdev Javel at exh.89 and Pannalal Hiralal Bachakaniwala at exh.110. He submitted that the learned Magistrate ought to have appreciated documentary evidence produced by the prosecution. He also submitted that it is undoubtedly proved from the documentary evidence as well as oral evidence that the accused have intentionally not paid the duty on the machine imported within the limits of the corporation and thereby the accused are guilty of the offences punishable under Octroi Rules, Standing Orders and BPMC Act and therefore, they ought to have been suitably punished. He lastly submitted that the learned Magistrate ought to have held that as the charges levelled against the accused are being proved they

ought to have been convicted for committing offence under Rule 13 and 21 of Octroi Rules, Standing Orders 6 and 7, as well as under Section 255(1) of Criminal Procedure Code and under Section 398 of the BPMC Act.

5. Learned APP Ms.Bhatt has supported the case of the appellant and adopted the arguments advanced by learned advocate Mr.Pandya.

6. On the other hand, Mr.R.R.Marshall has submitted that there is no infirmity in the impugned order. It submitted that the lower court has rightly appreciated the evidence on record and acquitted the respondents of the charges levelled against them. It is also submitted that the lower Court has rightly observed that the offence against the accused is not proved. It is, therefore, submitted that the impugned judgment may not be interfered with and it may be confirmed.

7. Heard learned advocates appearing for the parties. I have also perused the evidence on record. While passing the impugned order, it is found by the learned Judge that one of the prosecution, who is also the manufacturer of the machine in question, has stated in his evidence that the price of the goods shown in Exh.115 to 139 is included in bill at Exh.92. This fact is neither controverted by the prosecution nor it is proved that these chalans are got up or

concocted. It is also found by the trial Court that production of receipt was in favour of the accused, therefore, it cannot be said that such receipts were not produced by the accused intentionally. It is also found that the director Himson company had given quotation to the accused, therefore, it is possible that the bill might have been given for the purpose of quotation. It is also found that for the bill at Exh.92, the accused have already paid octroi. Therefore, in my view, learned Judge has rightly observed that from the evidence on record it could not be proved that the accused have committed any offence. Therefore, learned Judge has rightly observed that the prosecution could not prove its case beyond reasonable doubt.

8. In a recent decision of the Apex Court in the case of **State of Goa V. Sanjay Thakran & Anr. Reported in (2007)3 SCC 75**, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the

Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

9. Similar principle has been laid down by the Apex Court in the cases of **State of Uttar Pradesh Vs. Ram Veer Singh & Ors, reported in 2007 AIR SCW 5553** and in **Girja Prasad (Dead) by LRs Vs. state of MP, reported in 2007 AIR SCW 5589**. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

10. Even in a recent decision of the Apex Court in the case of **Mookiah and Anr. Vs. State, Rep. By the Inspector of Police, Tamil Nadu (AIR 2013 SC 321)**, the Apex Court in Para-4 has held as under:

"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze

the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]”

11. It is settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. I do not find any cogent reason to interfere with the impugned decision as it cannot be said to be either perverse or not borne out from the facts of the case. The appellant has not been able to persuade this

Court to take a different view in this matter. Hence, this appeal sans merit and is required to be dismissed.

12. In the result, the appeal is hereby dismissed. The impugned judgment and order dated 15.1.1990 rendered by the learned Judicial Magistrate, First Class (Municipal), Surat, in Municipal Case No.205 of 1984, acquitting the respondents-accused, is hereby confirmed. Record and Proceedings, if any, be sent back to the trial Court concerned forthwith. Bail and bail bond, if any, stands cancelled.

Sd/-
(K.J.THAKER, J)

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